

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CARL E. WHITACRE, : Case No. 2:23-cv-3435
Plaintiff, :
vs. : District Judge Edmund A. Sargus, Jr.
WARDEN JAY FORSHEY, et al., : Magistrate Judge Kimberly A. Jolson
Defendants. :
:

REPORT AND RECOMMENDATION

On October 17, 2023, Plaintiff filed a complaint in this Court. (Doc. 1). Plaintiff did not sign the complaint, pay the filing fee, or move for leave to proceed *in forma pauperis*, so a Notice of Deficiency was issued. (See Docs. 1, 2). Then, on December 11, 2023, the Court issued a Deficiency Order requiring Plaintiff to pay \$402 (\$350 filing fee plus \$52 administrative fee) or to submit to the Court a completed Application and Affidavit By Incarcerated Person to Proceed Without Prepayment of Fees form within thirty (30) days. (Doc. 4). Plaintiff was further ordered to sign the complaint and return it to the Clerk of Court within thirty (30) days. (*Id.* at 2). Finally, Plaintiff was advised that failure to comply with this Order would result in the dismissal of this case for want of prosecution. (*Id.*).

A week later, Plaintiff filed a motion for leave to proceed *in forma pauperis*, but he still failed to submit a signed complaint or provide a certified copy of his prisoner account statement. (See Doc. 5). On January 12, 2024, the Court issued a second Deficiency Order, again ordering Plaintiff to (1) pay the full filing fee or to submit to the Court a certified copy of his prisoner trust fund account statement, and (2) sign the complaint and return it to the Clerk of Court within thirty

(30) days. (Doc. 6). For a second time, Plaintiff was warned that failure to comply with the Order would result in the dismissal of this action for want of prosecution. (*Id.* at 2).

Most recently, on February 14, 2024, the Court issued a third Deficiency Order providing Plaintiff with one final chance to sign the complaint and provide a certified copy of his prisoner account statement within fourteen (14) days. (Doc. 8). Consistent with the prior orders, the Court instructed Plaintiff that “failure to comply with this Order will result in the dismissal of this action for want of prosecution.” (*Id.* at 2). To date, more than fourteen (14) days after the February 14, 2024, Deficiency Order, Plaintiff has failed to respond to or otherwise comply with the Order.

District courts have the inherent power to *sua sponte* dismiss civil actions for want of prosecution to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962); *see also Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Failure of a party to respond to an order of the court warrants invocation of the Court’s inherent power. *See* Fed. R. Civ. P. 41(b). It is therefore **RECOMMENDED** that this matter be **DISMISSED** for lack of prosecution.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN DAYS** after being served with a copy

of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Date: March 6, 2024

/s/Kimberly A. Jolson

KIMBERLY A. JOLSON

UNITED STATES MAGISTRATE JUDGE